

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7009      PCB PIE 20-01      Penalties for Violations of the Constitutional Prohibition  
Against Abuse of Public Position  
**SPONSOR(S):** Public Integrity & Ethics Committee, Byrd  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 7006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Ethics Committee	15 Y, 0 N	Rubottom	Rubottom

### SUMMARY ANALYSIS

HB 7009 reenacts s. 112.317, F.S., providing penalties for violations of the Code of Ethics and any violation of the Ethics in government section of the Florida Constitution.<sup>1</sup>

During the 2018 General Election, Florida voters approved Amendment 12, which amended the Ethics in government section of the Constitution to, among other things, provide a constitutional prohibition on public officers and public employees abusing their positions in order to obtain a 'disproportionate benefit' for themselves or other specified persons or entities.<sup>2</sup> The amendment included an implementation schedule.<sup>3</sup> The abuse of position provision becomes effective December 31, 2020.

The adopted amendment prohibits public officers and employees from abusing their public positions to obtain a 'disproportionate benefit' for themselves, their spouse, children, employer, or entities with which they have certain business interests. As required by the amendment,<sup>4</sup> the Florida Commission on Ethics (Commission) recently adopted a rule to define the term, 'disproportionate benefit' and prescribe the requisite intent for finding a violation of the provision.<sup>5</sup>

The adopted amendment also mandates that "appropriate penalties shall be provided by law"<sup>6</sup> A schedule included in the amendment requires the Legislature to enact penalty legislation "following the adoption of rules" by the Commission.<sup>7</sup>

HB 7009 expressly states that its purpose is to implement the abuse of position prohibition in the amendment. Under the bill, the penalties applicable to that provision will be the same penalties applicable to other violations of the Ethics in government section.

The bill may have a slightly positive fiscal impact in that it authorizes financial penalties for violating the new prohibition.

The bill has an effective date of December 31, 2020, as required by Amendment 12.<sup>8</sup>

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<sup>1</sup> S. 8, Art. II, Fl. Const.

<sup>2</sup> S. 8(h)(2), Art. II, Fl. Const.

<sup>3</sup> S. 38, Art. XII, Fl. Const.

<sup>4</sup> S. 38(a), Art. XII, Fl. Const.

<sup>5</sup> Rule 34-18.001, F.A.C.

<sup>6</sup> S. 8(h)(2), Art. II, Fl. Const.

<sup>7</sup> S. 38(b), Art. XII, Fl. Const.

<sup>8</sup> S. 38(b), Art. XII, Fl. Const.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Florida Constitution contains ethics standards applicable to public officers, candidates for public office, and public employees. These standards impose financial disclosure and campaign finance disclosure requirements on public officers and candidates, as well as prohibitions on personal representation post-service.

The Code of Ethics for Public Officers and Employees (Code) implements the constitutional standards. The Code is codified in part III, chapter 112, F.S. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.

The Code contains provisions that establish standards for the conduct of elected and appointed officials and government employees.

The Florida Commission on Ethics (Commission) is the independent body charged with receiving and investigating sworn complaints involving Florida's constitutional ethics provisions, as well as any other violation of the Code. While the Commission receives and investigates sworn complaints, the Commission does not have the authority to impose punishment for an ethics violation. Instead, whenever the Commission finds probable cause exists that an ethics violation has occurred, the Commission is required to submit its findings, along with a recommended penalty, to the statutorily designated official who may impose punishment.

Pursuant to statute, in any case in which a civil penalty or restitution is imposed, the Attorney General is required to bring a civil action to recover such penalty.

During the 2018 General Election, Florida voters approved Amendment 12, which among other things, provides a constitutional prohibition on public officers and public employees abusing their positions in order to obtain a 'disproportionate benefit' for themselves or other specified persons or entities. The amendment becomes effective December 31, 2020.

The adopted amendment prohibits public officers and employees from abusing their public positions to obtain a 'disproportionate benefit' for themselves, their spouse, children, employer, or entities with which they have certain business interests. As required by the amendment, the Commission recently adopted a rule to define the term, 'disproportionate benefit' and prescribe the requisite intent for finding a violation of the provision.

The adopted amendment also mandates that "appropriate penalties shall be provided by law." The amendment included an implementation schedule<sup>9</sup> requiring the Legislature to enact penalty legislation "following the adoption of rules" by the Commission.<sup>10</sup>

##### Effect of Proposed Changes

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<sup>9</sup> S. 38, Art. XII, Fl. Const.

<sup>10</sup> S. 38(b), Art. XII, Fl. Const.

HB 7009 implements the constitutional provisions related to the prohibition on abuse of position by reenacting existing statutory penalties for ethics violations. The penalties applicable to the disproportionate benefit provision will be the same penalties applicable to other violations of the Ethics in government section of the Constitution.

The bill has an effective date of December 31, 2020, as required by the constitutional amendment being implemented.<sup>11</sup>

**B. SECTION DIRECTORY:**

Section 1. Provides directory language and reenacts penalty provisions of s. 112.317, F.S.

Section 2. Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill authorizes financial penalties for violating the new prohibition. Any revenue impact is expected to be slight.

2. Expenditures:

N/A

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

N/A

2. Expenditures:

N/A

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

N/A

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill implements a constitutional amendment directly regulating conduct of public officials but requiring provision of penalties in general law.

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<sup>11</sup> S. 38, Art. XII, Fl. Const.  
**STORAGE NAME:** h7009.PIE  
**DATE:** 12/11/2019

**B. RULE-MAKING AUTHORITY:**

N/A

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill consists only of directory language. While unusual, a simple reenactment by statutory reference need not reprint the statute affected.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**